

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 09-00816 (SRC) (MAS)

THE LAUTENBERG FOUNDATION,
JOSHUA S. LAUTENBERG AND
ELLEN LAUTENBERG,

DEPOSITION UPON
ORAL EXAMINATION
OF
PETER MADOFF

Plaintiffs

vs

PETER MADOFF,

Defendant

ORIGINAL

T R A N S C R I P T of the stenographic
notes of SUSAN GIOFFRE, a Notary Public and
Certified Court Reporter of the State of New Jersey,
License No. XI001220, taken at the offices of
LANGLER, SIFFERT & WOHL, LLP, 500 Madison Avenue
New York, New York, on Thursday, November 12, 2009,
commencing at approximately 10:45 a.m.

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MR. SPADA: Ron, as I mentioned before we began, I'd like to read a statement into the record.

My name is Charles Spada. I'm counsel for Mr. Madoff, with me is Rosie Rubin.

The Plaintiffs' Complaint alleges that in December 2008, Defendant, Peter Madoff, was told that his brother had committed a massive, decades long, now notorious fraud in the investment advisory at Bernard L. Madoff Investment Securities, LLC.

Upon Bernard Madoff's arrest in December 2008, the FBI and the trustee appointed by the court to liquidate BLMIS under the Securities Investor Protection Act, took over Madoff Securities' premises and seized all Madoff Securities' documents.

Those documents include 40 years' worth of e-mail, correspondence, account statements, financial documents and other documents.

At the time the U.S. Attorney's office for the Southern District of New York launched a wide-ranging investigation of Bernard Madoff's Ponzi fraud, which is still ongoing eleven months later.

This investigation has resulted in the prosecution of Bernard Madoff and two other individuals.

I N D E X

| WITNESS NAME | PAGE NO. |
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| PETER MADOFF | |
| DIRECT EXAMINATION BY MR. RICCIO | 9 |

E X H I B I T S

| EXHIBIT NO. | DESCRIPTION | PAGE NO. |
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| P-1 | Complaint | 12 |
| P-2 | Answer of Defendant Peter Madoff | 14 |
| P-3 | Opinion | |
| P-4 | Order Amending Opinion | 38 |
| P-5 | (Documents Re: Lautenberg Family Foundation/Joshua Lautenberg) | 38 |
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| P-7 | Article by Erin Arvedlund, 5/7/01 | 81 |

Peter Madoff remains a subject of this investigation.

The U.S. Attorney's office has stated in a recent publicly available court filing that it has secured, "The contents of one-half floor of an office building containing the equivalent of thousands of boxes of documents", concerning the Ponzi scheme, and that's in the Motion for Reconsideration of Bail Conditions in United States vs Frank DePascale.

Peter Madoff has no access to the documents secured by the U.S. Attorney's office.

The complaint here alleges that the Plaintiffs, with whom Peter Madoff had no direct relationship, are among the victims of Bernard Madoff's fraud in the investment advisory business

The heart of the Complaint is that in hindsight, Peter Madoff did not satisfactorily address a complex series of red flags that arose over a period of years concerning Bernard Madoff's investment advisory business and that Peter Madoff was a culpable participant in the fraud in that he, directly or indirectly, endorsed, induced or concealed the securities law violations of Madoff Securities.

2 (Pages 2 to 5)

1 The Complaint's allegations and
2 Defendant's various defenses are thus extremely fact
3 intensive, potentially depending on the precise
4 circumstances in which each alleged event occurred
5 over a 20-plus year period and Peter Madoff's duties
6 and knowledge at various times during this 20-plus
7 year period.
8 Even the sharpest of memories could not
9 accurately address these issues without the benefit
10 of reviewing and being refreshed by extensive
11 relevant documents which we will seek to obtain
12 pursuant to the normal discovery process.
13 Accordingly, we have asserted that in
14 the interest of fairness, accuracy and efficiency,
15 document discovery should proceed before depositions.
16 Document discovery would enable Peter
17 to refresh his recollection of relevant facts and
18 events in this matter.
19 Plaintiffs, however, have been
20 unwilling to adjourn Peter's testimony, and the Court
21 has granted Plaintiffs' application to take the
22 Defendant's deposition over our objection and request
23 to stay the deposition until the parties have had an
24 opportunity for document discovery.
25 In light of all the circumstances

1 detailed above, our only responsible alternative is
2 to advise Peter Madoff to exercise his constitutional
3 right to decline to answer the Plaintiffs' questions
4 at this time.
5 In 2001, the U.S. Supreme Court, in a
6 decision in *Ohio vs. Reiner*, noted that the Fifth
7 Amendment's basic function is to protect innocent men
8 who otherwise might be ensnared by ambiguous
9 circumstances.
10 An innocent man could find no more
11 ambiguous and treacherous circumstances than these.
12 MR. RICCIO: Just in response briefly,
13 a few points.
14 First, the argument that counsel has
15 just advanced, in what amounts to a self-serving
16 statement, was presented to Judge Arleo.
17 The argument was rejected, an Order has
18 been entered, and Mr. Madoff is here today pursuant
19 to a court order.
20 Additionally, the --
21 MR. SPADA: Ron, just to clarify that.
22 We do not have the court order yet, but
23 both sides, it's understood we're not disputing,
24 we're operating under that the Court has ordered that
25 this deposition take place.

1 MR. RICCIO: Yes. Additionally, we do
2 not agree with the characterization of the
3 allegations in this Complaint against Mr. Madoff.
4 They are significantly different than
5 Plaintiffs' view of things.
6 We would refer to our Complaint and to
7 Judge Chesler's Opinion denying the Defendant's
8 Motion to Dismiss in substantial parts.
9 Whether the Fifth Amendment is properly
10 invoked will depend on a question-by-question
11 analysis of the question and the answer.
12 As we understand it now, you're going to
13 be invoking the Fifth Amendment on a blanket basis,
14 is that correct?
15 MR. SPADA: Until we have access to the
16 documents, he'll be allowed to give you his name and
17 no other information concerning this matter.
18 MR. GREENBERG: Could we have two
19 seconds?
20 MR. SPADA: Sure. We're going off the
21 record?
22 MR. GREENBERG: Yes.
23 (Discussion off the record.)
24
25

1 PETER MADOFF,
2 called as a witness, having been first
3 duly sworn according to law,
4 testifies as follows:
5
6 DIRECT EXAMINATION BY MR. RICCIO:
7
8 Q Mr. Madoff, my name is Ronald Riccio.
9 With me today at this deposition to my
10 left is Greg Trif, to his left is Stephen Greenberg.
11 We are counsel for Plaintiffs in a
12 lawsuit, The Lautenberg Foundation vs Peter Madoff.
13 You are Peter Madoff, are you not?
14 A Yes.
15 Q And you are the Defendant in this
16 action, are you not?
17 A Yes.
18 Q Now, you've been administered an oath to
19 tell the truth. The oath that you have been
20 administered is the same oath as you would take if
21 you were called to testify at a trial in this matter.
22 All of your answers and all of my
23 questions are being stenographically transcribed by a
24 court reporter.
25 The reason we're doing that is so that

3 (Pages 6 to 9)

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|--|--|
| <p>10</p> <p>1 there is a record of what happens here today.</p> <p>2 If at any point in time you don't</p> <p>3 understand a question that I ask, then please ask me</p> <p>4 to repeat it or rephrase it, and I will, otherwise</p> <p>5 I'm going to assume that you understood the question</p> <p>6 and gave an answer knowingly understanding the</p> <p>7 question that I asked.</p> <p>8 Do you understand that?</p> <p>9 A Yes.</p> <p>10 Q You also need to verbalize all of your</p> <p>11 answers so that, you know, a nod, for example, cannot</p> <p>12 be transcribed because it's not audible.</p> <p>13 Do you understand that?</p> <p>14 A Yes.</p> <p>15 Q From time to time during the course of</p> <p>16 this deposition, your lawyer may make an objection to</p> <p>17 a question that I ask.</p> <p>18 You should allow him to make his</p> <p>19 objection, and then unless he directs you not to</p> <p>20 answer, you are required to do so.</p> <p>21 Do you understand that?</p> <p>22 A Yes.</p> <p>23 Q Is there any reason why, because of your</p> <p>24 health, you are unable to testify today?</p> <p>25 A No.</p> | <p>12</p> <p>1 against myself.</p> <p>2 Q Have you ever been a defendant in a</p> <p>3 civil case?</p> <p>4 A Upon the advice of my counsel, I</p> <p>5 respectfully decline to answer based on my right</p> <p>6 under the Fifth Amendment to the United States</p> <p>7 Constitution not to be compelled to be a witness</p> <p>8 against myself.</p> <p>9 Q Are you currently a defendant in any</p> <p>10 case other than this action?</p> <p>11 A Upon the advice of my counsel, I</p> <p>12 respectfully decline to answer based on my right</p> <p>13 under the Fifth Amendment to the United States</p> <p>14 Constitution not to be compelled to be a witness</p> <p>15 against myself.</p> <p>16 Q Have you read the Complaint in this</p> <p>17 action?</p> <p>18 A Upon the advice of my counsel, I</p> <p>19 respectfully decline to answer based on my right</p> <p>20 under the Fifth Amendment to the United States</p> <p>21 Constitution not to be compelled to be a witness</p> <p>22 against myself.</p> <p>23 MR. RICCIO: Would you mark that as P-1?</p> <p>24 (Complaint is received and marked as</p> <p>25 Plaintiffs' Exhibit 1 for Identification.)</p> |
| <p>11</p> <p>1 Q Where do you live, Mr. Madoff?</p> <p>2 A Upon the advice of my counsel, I</p> <p>3 respectfully decline to answer based on my right</p> <p>4 under the Fifth Amendment to the United States</p> <p>5 Constitution not to be compelled to be a witness</p> <p>6 against myself.</p> <p>7 Q What's the basis for your assertion of</p> <p>8 that?</p> <p>9 MR. SPADA: The basis is on advice of</p> <p>10 counsel.</p> <p>11 Q Are you in fear of a criminal</p> <p>12 prosecution?</p> <p>13 MR. SPADA: I refuse to allow the</p> <p>14 witness to answer that because it may result in the</p> <p>15 disclosure of attorney/client privilege.</p> <p>16 Q Are you the target of a grand jury</p> <p>17 investigation?</p> <p>18 MR. SPADA: Same objection, and I refuse</p> <p>19 -- as we stated in our statement, we've been informed</p> <p>20 he is the subject of the investigation.</p> <p>21 Q Have you ever been deposed before?</p> <p>22 A Upon the advice of my counsel, I</p> <p>23 respectfully decline to answer based on my right</p> <p>24 under the Fifth Amendment to the United States</p> <p>25 Constitution not to be compelled to be a witness</p> | <p>13</p> <p>1 Q Mr. Madoff, P-1 for Identification is a</p> <p>2 copy of the Complaint in this matter, Lautenberg vs</p> <p>3 Peter Madoff.</p> <p>4 I'm going to show you P-1 and ask you to</p> <p>5 take a look at it and tell me when you've examined</p> <p>6 it.</p> <p>7 (Witness reviewing exhibit.)</p> <p>8 Q Have you had an opportunity to look at</p> <p>9 the Complaint?</p> <p>10 A Upon the advice of my counsel, I</p> <p>11 respectfully decline to answer based on my right</p> <p>12 under the Fifth Amendment to the United States</p> <p>13 Constitution not to be compelled to be a witness</p> <p>14 against myself.</p> <p>15 Q Do you feel that you are risking</p> <p>16 self-incrimination because thirty-seconds ago you</p> <p>17 leafed through P-1?</p> <p>18 A Upon the advice of my counsel, I</p> <p>19 respectfully decline to answer based on my right</p> <p>20 under the Fifth Amendment to the United States</p> <p>21 Constitution not to be compelled to be a witness</p> <p>22 against myself.</p> <p>23 MR. SPADA: Are you asking that he sit</p> <p>24 here and review the whole Complaint?</p> <p>25 MR. RICCIO: No. I asked him to examine</p> |

4 (Pages 10 to 13)

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|---|---|
| <p>1 it, and he did.</p> <p>2 Q Have you ever seen P-1 before today?</p> <p>3 A Upon the advice of my counsel, I</p> <p>4 respectfully decline to answer based on my right</p> <p>5 under the Fifth Amendment to the United States</p> <p>6 Constitution not to be compelled to be a witness</p> <p>7 against myself.</p> <p>8 Q Have you discussed the Complaint in this</p> <p>9 action with anyone other than your lawyers?</p> <p>10 A Upon the advice of my counsel, I</p> <p>11 respectfully decline to answer based on my right</p> <p>12 under the Fifth Amendment to the United States</p> <p>13 Constitution not to be compelled to be a witness</p> <p>14 against myself.</p> <p>15 Q Is Shana Madoff your wife?</p> <p>16 A Upon the advice of my counsel, I</p> <p>17 respectfully decline to answer based on my right</p> <p>18 under the Fifth Amendment to the United States</p> <p>19 Constitution not to be compelled to be a witness</p> <p>20 against myself.</p> <p>21 MR. RICCIO: Can we mark this as P-2 for</p> <p>22 Identification?</p> <p>23 (Answer of Defendant Peter Madoff is</p> <p>24 received and marked as Plaintiffs' Exhibit 2 for</p> <p>25 Identification.)</p> | <p>14</p> <p>1 Q Did you authorize Mr. Spada to file this</p> <p>2 Complaint?</p> <p>3 MR. SPADA: Objection, calls for</p> <p>4 attorney/client privilege, and I instruct the witness</p> <p>5 not to answer.</p> <p>6 MR. RICCIO: Let me correct my question</p> <p>7 to which you objected.</p> <p>8 I meant to say "Answer."</p> <p>9 Q Did you authorize Mr. Spada to file this</p> <p>10 Answer on your behalf?</p> <p>11 MR. SPADA: Same objection, and I</p> <p>12 instruct the witness not to answer.</p> <p>13 Q Did you review the Answer before it was</p> <p>14 filed?</p> <p>15 A Upon the advice of my counsel, I</p> <p>16 respectfully decline to answer based on my right</p> <p>17 under the Fifth Amendment to the United States</p> <p>18 Constitution not to be compelled to be a witness</p> <p>19 against myself.</p> <p>20 Q Have you ever read the Answer?</p> <p>21 A Upon the advice of my counsel, I</p> <p>22 respectfully decline to answer based on my right</p> <p>23 under the Fifth Amendment to the United States</p> <p>24 Constitution not to be compelled to be a witness</p> <p>25 against myself.</p> |
| <p>15</p> <p>1 Q By the way, Shana Madoff is your</p> <p>2 daughter, correct?</p> <p>3 A Upon the advice of my counsel, I</p> <p>4 respectfully decline to answer based on my right</p> <p>5 under the Fifth Amendment to the United States</p> <p>6 Constitution not to be compelled to be a witness</p> <p>7 against myself.</p> <p>8 Q Take a look at P-2 for Identification</p> <p>9 which is the Answer filed by your lawyers to the</p> <p>10 Complaint in this action, and please take your time</p> <p>11 and go through it, okay?</p> <p>12 (Witness reviewing exhibit.)</p> <p>13 Q And am I correct that this answer was</p> <p>14 filed on your behalf by your attorney, Mr. Spada?</p> <p>15 A Upon the advice of my counsel, I</p> <p>16 respectfully decline to answer based on my right</p> <p>17 under the Fifth Amendment to the United States</p> <p>18 Constitution not to be compelled to be a witness</p> <p>19 against myself.</p> <p>20 Q Is Mr. Spada your attorney?</p> <p>21 A Upon the advice of my counsel, I</p> <p>22 respectfully decline to answer based on my right</p> <p>23 under the Fifth Amendment to the United States</p> <p>24 Constitution not to be compelled to be a witness</p> <p>25 against myself.</p> | <p>17</p> <p>1 Q Did Mr. Spada file this Answer without</p> <p>2 showing it to you?</p> <p>3 A Upon the advice of my counsel, I</p> <p>4 respectfully decline to answer based on my right</p> <p>5 under the Fifth Amendment to the United States</p> <p>6 Constitution not to be compelled to be a witness</p> <p>7 against myself.</p> <p>8 Q Take a look at paragraph 11 of the</p> <p>9 Answer, please.</p> <p>10 MR. SPADA: I don't think we have it.</p> <p>11 (Handing.)</p> <p>12 Q Do you have paragraph 11 in front of</p> <p>13 you?</p> <p>14 (Witness reviewing exhibit.)</p> <p>15 Q Do you want me to repeat my question?</p> <p>16 Do you have paragraph 11 in front of</p> <p>17 you?</p> <p>18 A Yes.</p> <p>19 Q Have you read it?</p> <p>20 A Yes.</p> <p>21 Q Is it accurate?</p> <p>22 A Upon the advice of my counsel, I</p> <p>23 respectfully decline to answer based on my right</p> <p>24 under the Fifth Amendment to the United States</p> <p>25 Constitution not to be compelled to be a witness</p> |

5 (Pages 14 to 17)

18

1 against myself.

2 Q Paragraph 11 states that you're an

3 attorney. Are you an attorney?

4 A Upon the advice of my counsel, I

5 respectfully decline to answer based on my right

6 under the Fifth Amendment to the United States

7 Constitution not to be compelled to be a witness

8 against myself.

9 Q Are you 63 years old?

10 A Upon the advice of my counsel, I

11 respectfully decline to answer based on my right

12 under the Fifth Amendment to the United States

13 Constitution not to be compelled to be a witness

14 against myself.

15 Q Are you Bernard Madoff's brother?

16 A Upon the advice of my counsel, I

17 respectfully decline to answer based on my right

18 under the Fifth Amendment to the United States

19 Constitution not to be compelled to be a witness

20 against myself.

21 Q Did you work at BLMIS from June of 1969

22 until December 2008?

23 A Upon the advice of my counsel, I

24 respectfully decline to answer based on my right

25 under the Fifth Amendment to the United States

19

1 Constitution not to be compelled to be a witness

2 against myself.

3 Q Are there any documents in the

4 possession of the SIPC Trustee or United States

5 Attorney that you would need to look at in order to

6 determine how old you are?

7 A Upon the advice of my counsel, I

8 respectfully decline to answer based on my right

9 under the Fifth Amendment to the United States

10 Constitution not to be compelled to be a witness

11 against myself.

12 Q Are there any documents in the

13 possession of the United States Attorney or the SIPC

14 Trustee that you would need to look at to determine

15 whether you are Bernard Madoff's brother?

16 A Upon the advice of my counsel, I

17 respectfully decline to answer based on my right

18 under the Fifth Amendment to the United States

19 Constitution not to be compelled to be a witness

20 against myself.

21 Q Do you deny that between June of 1969

22 until December 2008 that you worked at BLMIS?

23 A Upon the advice of my counsel, I

24 respectfully decline to answer based on my right

25 under the Fifth Amendment to the United States

20

1 Constitution not to be compelled to be a witness

2 against myself.

3 Q Did you allow a knowingly false answer

4 to be filed with the Court in this matter?

5 MR. SPADA: Objection.

6 A Upon the advice of my counsel, I

7 respectfully decline to answer based on my right

8 under the Fifth Amendment to the United States

9 Constitution not to be compelled to be a witness

10 against myself.

11 Q Take a look at paragraph 13.

12 Would you read that, please?

13 (Witness reviewing exhibit.)

14 Q Have you read it?

15 A Yes.

16 Q Would you read it into the record?

17 MR. SPADA: I'm going to object to

18 having the witness read the document into the record.

19 MR. RICCIO: Why?

20 MR. SPADA: I don't understand. You've

21 marked the exhibit.

22 I'm not going to allow the witness to

23 sit here and read documents when he's asserting his

24 right until he has access to documents.

25 MR. RICCIO: It's one sentence.

21

1 MR. SPADA: Okay, I'm objecting.

2 Q You can read it into the record.

3 MR. SPADA: I object and instruct the

4 witness not to read the document into the record.

5 The document is already in the record.

6 MR. RICCIO: So what's the basis for the

7 direction?

8 MR. SPADA: The basis is upon advice of

9 counsel he is asserting his rights not to respond to

10 your questions -- not to answer your questions.

11 We're not going to go through an

12 exercise where you pull out excerpts from documents

13 and ask the witness to read them into the record to

14 try to create the appearance that he's giving some

15 sort of testimony on it.

16 The document is already in the record.

17 Whatever document you want to enter into the record,

18 you're free to do that, but this is not going to be

19 an exercise in having him read documents into the

20 record.

21 MR. RICCIO: What I want to understand

22 is, is he not reading it into the record because he's

23 taking the Fifth or because you're directing him not

24 to answer?

25 MR. SPADA: I'm directing him not to

6 (Pages 18 to 21)

| | |
|---|---|
| <p>1 answer.</p> <p>2 MR. RICCIO: And you're directing him</p> <p>3 not to answer on what basis?</p> <p>4 MR. SPADA: The document is already in</p> <p>5 the record and I don't want you to be able to create</p> <p>6 the false appearance that you're getting some form of</p> <p>7 testimony about him when it's clear he's asserting</p> <p>8 his rights until we get access to the documents.</p> <p>9 MR. RICCIO: Our position is that that</p> <p>10 is not a basis for instructing the witness not to</p> <p>11 answer.</p> <p>12 MR. SPADA: Understood.</p> <p>13</p> <p>14 BY MR. RICCIO:</p> <p>15 Q Well, Mr. Madoff, since you haven't read</p> <p>16 paragraph 13 into the record, I will.</p> <p>17 It says, Defendant admits the</p> <p>18 allegations in paragraph 13 of the Complaint.</p> <p>19 I'm sorry.</p> <p>20 "Defendant denies the allegations in</p> <p>21 paragraph 13 of the Complaint, except admits that</p> <p>22 during certain years Defendant was responsible for</p> <p>23 the day-to-day management of the market-making</p> <p>24 trading desk at BLMIS."</p> <p>25 Did I correctly read that statement in</p> | <p>22</p> <p>1 under the Fifth Amendment to the United States</p> <p>2 Constitution not to be compelled to be a witness</p> <p>3 against myself.</p> <p>4 Q Is there anything in Paragraph 14 that</p> <p>5 is not true?</p> <p>6 A Upon the advice of my counsel, I</p> <p>7 respectfully decline to answer based on my right</p> <p>8 under the Fifth Amendment to the United States</p> <p>9 Constitution not to be compelled to be a witness</p> <p>10 against myself.</p> <p>11 Q And am I correct that, according to</p> <p>12 paragraph 14, at various times you were a senior</p> <p>13 managing director and chief compliance officer of</p> <p>14 BLMIS?</p> <p>15 A Upon the advice of my counsel, I</p> <p>16 respectfully decline to answer based on my right</p> <p>17 under the Fifth Amendment to the United States</p> <p>18 Constitution not to be compelled to be a witness</p> <p>19 against myself.</p> <p>20 Q And am I correct that at various times</p> <p>21 your daughter Shana also worked at BLMIS?</p> <p>22 A Upon the advice of my counsel, I</p> <p>23 respectfully decline to answer based on my right</p> <p>24 under the Fifth Amendment to the United States</p> <p>25 Constitution not to be compelled to be a witness</p> |
| <p>23</p> <p>1 the record?</p> <p>2 A Upon the advice of my counsel, I</p> <p>3 respectfully decline to answer based on my right</p> <p>4 under the Fifth Amendment to the United States</p> <p>5 Constitution not to be compelled to be a witness</p> <p>6 against myself.</p> <p>7 MR. SPADA: And I'm going to give a</p> <p>8 belated objection to asking the witness whether</p> <p>9 you've read something correctly into the record.</p> <p>10 Q Were you responsible, during your years</p> <p>11 of work at BLMIS, for the day-to-day management of</p> <p>12 the market-making trading desk at BLMIS?</p> <p>13 A Upon the advice of my counsel, I</p> <p>14 respectfully decline to answer based on my right</p> <p>15 under the Fifth Amendment to the United States</p> <p>16 Constitution not to be compelled to be a witness</p> <p>17 against myself.</p> <p>18 Q Take a look at paragraph 14 and read</p> <p>19 that to yourself.</p> <p>20 (Witness reviewing exhibit.)</p> <p>21 Q Have you read it?</p> <p>22 A Yes.</p> <p>23 Q Do you understand it?</p> <p>24 A Upon the advice of my counsel, I</p> <p>25 respectfully decline to answer based on my right</p> | <p>25</p> <p>1 against myself.</p> <p>2 Q And am I correct that Shana, at various</p> <p>3 times, was a compliance attorney at BLMIS?</p> <p>4 A Upon the advice of my counsel, I</p> <p>5 respectfully decline to answer based on my right</p> <p>6 under the Fifth Amendment to the United States</p> <p>7 Constitution not to be compelled to be a witness</p> <p>8 against myself.</p> <p>9 MR. RICCIO: Just so that the record is</p> <p>10 clear, by listening to these invocations of the Fifth</p> <p>11 Amendment, it's not to be construed as an agreement</p> <p>12 that the Fifth Amendment has been properly invoked by</p> <p>13 the witness.</p> <p>14 We have a standing objection to his</p> <p>15 invocation of the Fifth Amendment rather than to</p> <p>16 object every time he does it.</p> <p>17 MR. SPADA: Sure.</p> <p>18 MR. RICCIO: Is that understood?</p> <p>19 MR. SPADA: Sure. We agree that you're</p> <p>20 not agreeing to his invocation by necessarily not</p> <p>21 objecting each time.</p> <p>22 MR. RICCIO: Yes. And that we reserve</p> <p>23 the right to object to his invocation for every</p> <p>24 invocation that he invokes during the course of this</p> <p>25 deposition.</p> |

7 (Pages 22 to 25)

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| <p>1 MR. SPADA: Understood.</p> <p>2</p> <p>3 BY MR. RICCIO:</p> <p>4 Q Would you take a look at P-1, which is</p> <p>5 the Complaint?</p> <p>6 (Witness reviewing exhibit.)</p> <p>7 Q Do you have it in front of you?</p> <p>8 Look at paragraph 15 of the Complaint</p> <p>9 and just read it to yourself silently so that you're</p> <p>10 familiar with it.</p> <p>11 (Witness reviewing exhibit.)</p> <p>12 Q Have you read it?</p> <p>13 A Yes.</p> <p>14 Q Okay. Did you understand it?</p> <p>15 A Upon the advice of my counsel, I</p> <p>16 respectfully decline to answer based on my right</p> <p>17 under the Fifth Amendment to the United States</p> <p>18 Constitution not to be compelled to be a witness</p> <p>19 against myself.</p> <p>20 Q Now, take a look at P-2, which is your</p> <p>21 Answer to the Complaint in this matter, and look at</p> <p>22 paragraph 15 of P-2.</p> <p>23 Do you have that in front of you?</p> <p>24 A Yes.</p> <p>25 Q Have you read it?</p> | <p>26</p> <p>1 Constitution not to be compelled to be a witness</p> <p>2 against myself.</p> <p>3 Q Am I correct that you are or have been a</p> <p>4 member of the NASD Board of Governors?</p> <p>5 A Upon the advice of my counsel, I</p> <p>6 respectfully decline to answer based on my right</p> <p>7 under the Fifth Amendment to the United States</p> <p>8 Constitution not to be compelled to be a witness</p> <p>9 against myself.</p> <p>10 Q What do the letters "NASD" stand for?</p> <p>11 A Upon the advice of my counsel, I</p> <p>12 respectfully decline to answer based on my right</p> <p>13 under the Fifth Amendment to the United States</p> <p>14 Constitution not to be compelled to be a witness</p> <p>15 against myself.</p> <p>16 Q Isn't it true that you were the chairman</p> <p>17 of the New York Region of the NASD?</p> <p>18 A Upon the advice of my counsel, I</p> <p>19 respectfully decline to answer based on my right</p> <p>20 under the Fifth Amendment to the United States</p> <p>21 Constitution not to be compelled to be a witness</p> <p>22 against myself.</p> <p>23 Q Isn't it true that in paragraph 15 of</p> <p>24 your Answer you admitted that you were the chairman</p> <p>25 of the New York Region of the NASD?</p> |
| <p>27</p> <p>1 A Yes.</p> <p>2 Q Do you understand it?</p> <p>3 A Upon the advice of my counsel, I</p> <p>4 respectfully decline to answer based on my right</p> <p>5 under the Fifth Amendment to the United States</p> <p>6 Constitution not to be compelled to be a witness</p> <p>7 against myself.</p> <p>8 Q Now, paragraph 15 of your Answer admits</p> <p>9 the allegations in the third, fourth, and fifth</p> <p>10 sentences of paragraph 15 of the Complaint.</p> <p>11 Do you see that?</p> <p>12 MR. SPADA: Does he see it in the</p> <p>13 document?</p> <p>14 MR. RICCIO: Yes.</p> <p>15 A Yes.</p> <p>16 Q Okay. And the third, fourth, and fifth</p> <p>17 sentences of paragraph 15 of the Complaint begin with</p> <p>18 the words "Not only was he an attorney..."</p> <p>19 Do you see that in the Complaint?</p> <p>20 A Yes.</p> <p>21 Q And am I correct that you have served as</p> <p>22 vice chairman of the NASD?</p> <p>23 A Upon the advice of my counsel, I</p> <p>24 respectfully decline to answer based on my right</p> <p>25 under the Fifth Amendment to the United States</p> | <p>29</p> <p>1 A Upon the advice of my counsel, I</p> <p>2 respectfully decline to answer based on my right</p> <p>3 under the Fifth Amendment to the United States</p> <p>4 Constitution not to be compelled to be a witness</p> <p>5 against myself.</p> <p>6 Q Is your answer in paragraph 15 a lie?</p> <p>7 A Upon the advice of my counsel, I</p> <p>8 respectfully decline to answer based on my right</p> <p>9 under the Fifth Amendment to the United States</p> <p>10 Constitution not to be compelled to be a witness</p> <p>11 against myself.</p> <p>12 Q Do you know why your lawyer, who filed</p> <p>13 the Answer on your behalf, admitted the third,</p> <p>14 fourth, and fifth sentences of paragraph 15?</p> <p>15 MR. SPADA: Objection, and I instruct</p> <p>16 the witness not to answer to the extent it would</p> <p>17 reveal attorney/client privilege.</p> <p>18 Q Without revealing any attorney/client</p> <p>19 communication, do you have an understanding why your</p> <p>20 attorney filed this Answer admitting the third,</p> <p>21 fourth, and fifth sentences?</p> <p>22 A Upon the advice of my counsel, I</p> <p>23 respectfully decline to answer based on my right</p> <p>24 under the Fifth Amendment to the United States</p> <p>25 Constitution not to be compelled to be a witness</p> |

8 (Pages 26 to 29)

| | |
|---|--|
| <p>1 against myself.</p> <p>2 Q Are there any documents that your</p> <p>3 attorney referred to -- strike that.</p> <p>4 You heard your attorney's opening</p> <p>5 statement, didn't you?</p> <p>6 A Yes.</p> <p>7 Q And you heard him talk about the fact</p> <p>8 that there are documents in the possession of the</p> <p>9 United States Attorney's office and the SIPC Trustee,</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q And you're concerned that those</p> <p>13 documents should be reviewed by you before you give</p> <p>14 testimony today, correct?</p> <p>15 A Yes.</p> <p>16 Q And you had access to those documents</p> <p>17 before you left the employ of BLMIS, did you not?</p> <p>18 A Upon the advice of my counsel, I</p> <p>19 respectfully decline to answer based on my right</p> <p>20 under the Fifth Amendment to the United States</p> <p>21 Constitution not to be compelled to be a witness</p> <p>22 against myself.</p> <p>23 Q At some point in time after your brother</p> <p>24 confessed to the Ponzi scheme, you entered the</p> <p>25 offices of BLMIS and sought to remove some belongings</p> | <p>30</p> <p>1 MR. SPADA: And belated objection to the</p> <p>2 form of the question.</p> <p>3 Q Take a look at paragraph 48 of your</p> <p>4 Answer of P-2.</p> <p>5 MR. SPADA: Forty-eight?</p> <p>6 MR. RICCIO: Yes.</p> <p>7 Q Please read it to yourself.</p> <p>8 (Witness reviewing exhibit.)</p> <p>9 Q Have you read it?</p> <p>10 A Yes.</p> <p>11 Q Do you understand it?</p> <p>12 A Upon the advice of my counsel, I</p> <p>13 respectfully decline to answer based on my right</p> <p>14 under the Fifth Amendment to the United States</p> <p>15 Constitution not to be compelled to be a witness</p> <p>16 against myself.</p> <p>17 Q Paragraph 48 states in relevant part,</p> <p>18 and I'm quoting, "He had direct and supervisory</p> <p>19 involvement in the day-to-day operations of the</p> <p>20 market-making and proprietary trading operations of</p> <p>21 BLMIS."</p> <p>22 Mr. Madoff, did I correctly read those</p> <p>23 words from paragraph 48 of your Answer?</p> <p>24 MR. SPADA: Can we have it read back?</p> <p>25 And your question is, did you read what</p> |
| <p>31</p> <p>1 from that office, isn't that true?</p> <p>2 MR. SPADA: Objection to form.</p> <p>3 You can respond.</p> <p>4 A Upon the advice of my counsel, I</p> <p>5 respectfully decline to answer based on my right</p> <p>6 under the Fifth Amendment to the United States</p> <p>7 Constitution not to be compelled to be a witness</p> <p>8 against myself.</p> <p>9 Q And isn't it true that when you tried to</p> <p>10 remove some belongings from the office, that you were</p> <p>11 stopped by the FBI from doing so?</p> <p>12 MR. SPADA: Objection to form.</p> <p>13 A Upon the advice of my counsel, I</p> <p>14 respectfully decline to answer based on my right</p> <p>15 under the Fifth Amendment to the United States</p> <p>16 Constitution not to be compelled to be a witness</p> <p>17 against myself.</p> <p>18 Q Do you have in your possession any</p> <p>19 documents that were prepared in the ordinary course</p> <p>20 of the business of BMIS -- or BLMIS?</p> <p>21 A Upon the advice of my counsel, I</p> <p>22 respectfully decline to answer based on my right</p> <p>23 under the Fifth Amendment to the United States</p> <p>24 Constitution not to be compelled to be a witness</p> <p>25 against myself.</p> | <p>33</p> <p>1 the Answer says?</p> <p>2 MR. RICCIO: Correctly.</p> <p>3 MR. SPADA: Correctly. I'm going to</p> <p>4 object and instruct the witness not to answer.</p> <p>5 MR. RICCIO: What's the basis for</p> <p>6 your --</p> <p>7 MR. SPADA: Are you asking did you read</p> <p>8 what words it says on the page correctly, that those</p> <p>9 are the exact words --</p> <p>10 MR. RICCIO: Right.</p> <p>11 MR. SPADA: -- that it says on that</p> <p>12 page?</p> <p>13 MR. RICCIO: Correct.</p> <p>14 MR. SPADA: Okay. You can answer that.</p> <p>15 Can we have it read -- read the question</p> <p>16 back or the part being quoted?</p> <p>17 (Question read back.)</p> <p>18 MR. SPADA: And we understand the</p> <p>19 question to be, are those the exact words of that</p> <p>20 portion on the page?</p> <p>21 MR. RICCIO: This is the third time,</p> <p>22 yes.</p> <p>23 A Yes.</p> <p>24 Q Are those words an accurate description</p> <p>25 of your involvement at BLMIS as an employee?</p> |

9 (Pages 30 to 33)

1 A Upon the advice of my counsel, I
2 respectfully decline to answer based on my right
3 under the Fifth Amendment to the United States
4 Constitution not to be compelled to be a witness
5 against myself.
6 MR. RICCIO: So the record is clear, the
7 paragraphs of the Answer that the witness was just
8 questioned about, in our view, opens the door for our
9 ability to question him more specifically about the
10 subject matter of those areas, mainly, his 40 years
11 of employment, as reflected in the Answer to
12 paragraph 11, at BLMIS, as well as his direct and
13 supervisory involvement at that firm.
14 So, therefore, it's our position
15 specifically that this is an improper invocation of
16 the Fifth Amendment. It's a violation of the Court's
17 order, it's a waiver of the Fifth Amendment, and we
18 reserve our right to move for sanctions.
19 MR. SPADA: And we would object to that
20 characterization and further state that in our
21 conversation -- first of all, it's clearly not a
22 waiver of the Fifth Amendment.
23 And secondly, you know that because in
24 all of our discussions you've wanted to take this
25 deposition to force him to assert the Fifth

1 Amendment.
2 So to now state that there's some sort
3 of waiver is not only inaccurate, but I think it's
4 disingenuous.
5 MR. RICCIO: So the record is clear,
6 this deposition wasn't taken to force him to take the
7 Fifth Amendment. It was taken to get him to provide
8 answer to the questions I'm asking.
9 You decided, as his attorney, that you
10 would recommend his invocation of the Fifth
11 Amendment, which is what he's doing, but you cannot
12 suggest that by us taking this deposition it was with
13 the agreement that he would invoke his Fifth
14 Amendment rights.
15 MR. SPADA: The discussion in front of
16 the Magistrate in which we objected to having him sit
17 for a deposition without the documents was that if he
18 is forced to do so, he will assert his rights.
19 There was no assertion for you -- by you
20 in front of the Magistrate that he in any way already
21 waived those rights.
22 So to now be arguing that there was some
23 sort of waiver is belated and I think disingenuous
24 and it's not supported by the law.
25

1 BY MR. RICCIO:
2 Q Mr. Madoff, do you understand your
3 obligations to obey court orders?
4 MR. SPADA: I'm going to instruct the
5 witness not to answer.
6 We don't even have a court order in
7 front of us, so to vaguely ask him does he understand
8 legal obligations to obey court orders is not a
9 proper question and I'm not going to let him answer.
10 MR. RICCIO: Just so the record is
11 clear, the Rules of Civil Procedure are pretty
12 specific about what you can direct the witness not to
13 answer, and you've had two or three directions not to
14 answer which are not anywhere, to my knowledge
15 supported by the rules.
16 You can certainly make your objection,
17 you can spell it out on the record, but it's not a
18 basis for directing him not to answer.
19 So when we move, and we're obviously
20 going to have to move before the Court for sanctions
21 for disobeying the Court's order, you know, among
22 other things, it's not just the frivolous invocation
23 of the Fifth Amendment, but it's, in addition, the
24 instructions not to answer which are not anywhere
25 supported by the rules.

1 MR. SPADA: Well, since there's not a
2 question pending, now is a good time to take a break.
3 MR. RICCIO: Okay, fine.
4 (Recess.)
5 MR. RICCIO: We're resuming after a
6 ten-minute recess.
7 In order to expedite this process, it's
8 evident to me that the witness will be taking the
9 Fifth Amendment on essentially every question that I
10 ask.
11 So I would have no objection, and rather
12 than having him read from the preprinted form that he
13 has, that he simply say "Fifth."
14 Is that acceptable, Charlie?
15 MR. SPADA: Either "Fifth Amendment" or
16 "same answer."
17 MR. RICCIO: Or "same answer," whatever
18 what --
19 MR. SPADA: Why don't we go with "same
20 answer" if he's invoking the Fifth?
21 And understood that you're not going to
22 say "same answer" if you've answered "Yes" or "No" to
23 a question.
24 "Same answer" will refer to the
25 statement "Upon the advice of my counsel, I

10 (Pages 34 to 37)

38

1 respectfully decline to answer based on my right
 2 under the Fifth Amendment to the United States
 3 Constitution not to be compelled to a witness against
 4 myself."
 5 MR. GREENBERG: Off the record.
 6 (Discussion off the record.)
 7 MR. RICCIO: P-3 for Identification is a
 8 copy of Judge Chesler's Opinion.
 9 And then, if you can, mark that one as
 10 P-4.
 11 (Opinion is received and marked as
 12 Plaintiffs' Exhibit 3 for Identification.)
 13 (Order Amending Opinion is received and
 14 marked as Plaintiffs' Exhibit 4 for Identification.)
 15
 16 BY MR. RICCIO:
 17 Q P-4 for Identification is Judge
 18 Chesler's November 4, 2009 Order amending his
 19 Opinion.
 20 Mr. Madoff, take a look at Exhibits 3
 21 and 4, and I represent to you that they are Judge
 22 Chesler's Opinion and Order amending his Opinion.
 23 My question to you is: Have you seen
 24 P-3 before today?
 25 (Witness reviewing exhibit.)

39

1 MR. SPADA: I also just object to the
 2 question to the extent it would reveal
 3 attorney/client privilege.
 4 I instruct you not to answer.
 5 MR. RICCIO: Charlie, you can't instruct
 6 him not to answer. He can answer by invoking the
 7 Fifth Amendment.
 8 MR. SPADA: If it's on something other
 9 than counsel showed him, is that your question?
 10 MR. RICCIO: Yes, other than something
 11 counsel showed you, yes.
 12 MR. SPADA: You can answer.
 13 A Upon the advice of my counsel, I
 14 respectfully decline to answer based on my right
 15 under the Fifth Amendment to the United States
 16 Constitution not to be compelled to be a witness
 17 against myself.
 18 Q Now, we have stipulated that from this
 19 point forward, if you intend to invoke your Fifth
 20 Amendment privilege, to just say "same answer" to the
 21 one you just gave.
 22 Is that understood?
 23 A Yes.
 24 Q Okay. Please turn to page 18 of the
 25 Court's Opinion.

40

1 A Exhibit 3?
 2 Q Yes.
 3 (Witness reviewing exhibit.)
 4 Q And look at the second paragraph of the
 5 Court's Opinion at page 18.
 6 I'm going to read into the record the
 7 sentence from the Opinion that I'll have a question
 8 about.
 9 The sentence reads, "As discussed by the
 10 Court above, the various indicia of wrongdoing and
 11 fraud alleged in the Complaint paired with Peter
 12 Madoff's responsibilities and role at BMIS constitute
 13 strong circumstantial evidence of recklessness by
 14 Defendant in his omissions regarding this
 15 information."
 16 My question is: Do you dispute Judge
 17 Chesler's finding that I just read to you?
 18 MR. SPADA: I'm going to object to the
 19 question to the extent it calls for a legal
 20 conclusion. I will let the witness respond.
 21 A Same answer.
 22 Q If you turn to page 19 of the Court's
 23 Opinion, eight lines from the top, I'm going to read
 24 into the record a sentence and ask you whether or not
 25 you dispute the accuracy of the Court's finding.

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1 "These allegations give rise to the
 2 strong inference that one charged with the
 3 responsibility for directing company policies,
 4 knowing its financial situation and ensuring legal
 5 compliance was aware of the investment advisory
 6 operations or would at the very least be reckless in
 7 failing to find out."
 8 Do you dispute that finding?
 9 MR. SPADA: I'm going to object to
 10 asking the witness for a legal conclusion and also
 11 object to any line of questioning based on the
 12 Opinion that is trying to trick the witness into
 13 somehow waiving his Fifth Amendment rights today,
 14 which upon the advice of counsel he is clearly
 15 invoking until we get access to the documents.
 16 You can respond.
 17 A Same answer.
 18 Q Mr. Madoff, are you invoking your Fifth
 19 Amendment rights provisionally?
 20 MR. SPADA: I'm going to object to form
 21 and also object to the extent that he's invoking his
 22 rights, as we've stated and he stated, upon the
 23 advice of counsel, and I'm going to object to him
 24 revealing the substance of that advice.
 25 Q Are you reserving the right to -- strike

11 (Pages 38 to 41)

42

1 that.

2 Are you reserving the right to reverse

3 the position you're taking today?

4 MR. SPADA: I am going to object to

5 that.

6 Again, it calls for the advice of

7 counsel, and I'm not going to allow the witness to

8 answer.

9 Q Mr. Madoff, do you deny having actual

10 knowledge of the Ponzi scheme referred into the

11 Complaint in this matter?

12 A Same answer.

13 Q Do you deny that for a period of at

14 least 20 years, you had actual knowledge of the Ponzi

15 scheme referred into the Complaint in this matter?

16 A Same answer.

17 Q Do you deny knowingly defrauding the

18 plaintiffs in this matter, to their great loss and

19 detriment, for the entire time that they were BMIS

20 customers?

21 A Same answer.

22 Q Do you deny having made material

23 affirmative misrepresentations to the plaintiffs in

24 this matter for the entire time that they were BMIS

25 customers?

43

1 A Same answer.

2 Q Do you deny omitting to disclose

3 material facts to the plaintiffs in this matter, to

4 their great loss and detriment, for the entire time

5 that they were BMIS customers?

6 A Same answer.

7 Q Do you deny having a malicious intent to

8 harm the plaintiffs for the entire time that they

9 were BMIS customers?

10 A Same answer.

11 Q Do you deny substantially assisting your

12 brother Bernard in stealing money from the plaintiffs

13 during the entire time that they were BMIS customers?

14 MR. SPADA: Objection to form.

15 You can respond.

16 A Same answer.

17 Q Do you deny being culpably involved and

18 participating in the Ponzi scheme to defraud the

19 plaintiffs?

20 MR. SPADA: Objection to form.

21 You can respond.

22 A Same answer.

23 Q Do you deny personally stealing more

24 than \$60 million from BMIS investors as a result of

25 the Ponzi scheme referred to in the Complaint?

44

1 MR. SPADA: Objection to form. You can

2 respond.

3 A Same answer.

4 Q Do you deny that Plaintiffs relied upon

5 your integrity, your trust, your knowledge, your

6 skill and training in make investments in BMIS?

7 MR. SPADA: Objection to form.

8 You can respond.

9 A Same answer.

10 Q Do you deny that Plaintiffs relied upon

11 your ethics in making their investment in BMIS?

12 MR. SPADA: Objection to form.

13 You can answer.

14 A Same answer.

15 Q What are your ethics as a businessman?

16 MR. SPADA: Objection to form.

17 You can respond.

18 A Same answer.

19 Q Do you believe you have ethics?

20 MR. SPADA: Objection to form.

21 You can respond.

22 A Same answer.

23 Q Do you -- strike that.

24 Do you deny that you had a fiduciary

25 relationship between yourself personally and

45

1 Plaintiffs?

2 A Same answer.

3 Q Did you deny that because you had a

4 fiduciary relationship directly with Plaintiffs, that

5 you owed them duties of care and loyalty?

6 A Same answer.

7 Q Do you deny that during the entire time

8 Plaintiffs were investors at BMIS, that you breached

9 your duty of loyalty to them?

10 A Same answer.

11 Q Do you deny that during the entire

12 period of time that Plaintiffs were customers at

13 BMIS, that you were grossly negligent in protecting

14 their investment?

15 A Same answer.

16 Q Do you deny that for the period of time

17 that Plaintiffs were customers in BMIS, that you were

18 negligent in protecting their investments?

19 A Same answer.

20 Q Do you deny attempting to secretly

21 remove documents from BMIS' offices after law

22 enforcement personnel ordered the offices locked

23 down?

24 MR. SPADA: Objection to form.

25 You can respond.

12 (Pages 42 to 45)

1 A Same answer.
 2 Q Did you have a conversation with your
 3 brother in December 2008 about redemption of --
 4 strike that.
 5 Do you deny that in January of 2008,
 6 that you traveled to Switzerland with your brother
 7 Bernard -- strike that.
 8 Do you deny that in 2004, you took a ski
 9 trip with your brother Bernard to discuss
 10 continuation of the Ponzi scheme?
 11 MR. SPADA: Objection to form.
 12 You can respond.
 13 A Same answer.
 14 Q Did you take a ski trip with your
 15 brother in 2004 to Switzerland?
 16 A Same answer.
 17 Q Do you deny that on January 1, 2008,
 18 that you and other members of your family, at a
 19 restaurant in Palm Beach, discussed and formulated a
 20 plan for the continuation of the Ponzi scheme?
 21 A Same answer.
 22 Q Do you deny having -- strike that.
 23 Have you ever been to a restaurant by
 24 the name of "Bistro Chez Jean Pierre" in Palm Beach?
 25 A Same answer.

1 Q Mr. Madoff, if I asked you questions
 2 about your history of any prior depositions, is it
 3 your intention to invoke the Fifth Amendment?
 4 A Same answer.
 5 MR. RICCIO: Can we have a stipulation
 6 that if asked questions about his history of prior
 7 depositions, that as to all of those questions he
 8 will invoke the Fifth Amendment?
 9 MR. SPADA: That would certainly be our
 10 advice, and I think he's already stated that earlier
 11 on the record.
 12 MR. RICCIO: Do I need to go through the
 13 questions?
 14 MR. SPADA: You do not.
 15 MR. RICCIO: So we are operating, then,
 16 on the premise that any questions pertaining to his
 17 history of prior depositions will be answered by him
 18 invoking the Fifth Amendment?
 19 MR. SPADA: That would be my advice.
 20 And would you follow my advice on that?
 21 THE WITNESS: Yes.
 22
 23 BY MR. RICCIO:
 24 Q If asked questions about your history of
 25 having given testimony in court cases, am I correct

1 that you will be invoking your Fifth Amendment
 2 privilege with respect to all of those questions?
 3 A Yes.
 4 Q With respect to your preparation for
 5 depositions -- strike that.
 6 With respect to your preparation for
 7 this deposition, am I correct that you will be
 8 invoking your Fifth Amendment privilege with respect
 9 to every question asked about your preparation?
 10 MR. SPADA: I would object also to the
 11 extent it calls for attorney/client privilege, which
 12 he's not obligated to reveal.
 13 A Yes.
 14 Q With respect to any other cases in which
 15 you are a party, whether they be civil, criminal,
 16 quasi-criminal or regulatory, am I correct that your
 17 answer to any questions regarding the subject matter
 18 of cases in which you are a party, that you will
 19 invoke your Fifth Amendment privilege with respect to
 20 every such question?
 21 MR. SPADA: Objection to form.
 22 You can respond.
 23 A Yes.
 24 Q Other than your lawyers, have you
 25 discussed this lawsuit with any other person?

1 A Same answer.
 2 Q Have you discussed this lawsuit with any
 3 representatives of the United States Attorney's
 4 office?
 5 A Same answer.
 6 Q Are you the subject of a grand jury
 7 investigation?
 8 MR. SPADA: I'm going to object to the
 9 extent it would call for attorney/client privilege.
 10 And as I stated on the record, defense
 11 counsel has been informed by the U.S. Attorney's
 12 office for the Southern District of New York that he
 13 is a subject of their investigation.
 14 MR. RICCIO: Is he a target of the
 15 investigation, I'm asking the witness.
 16 MR. SPADA: To the extent it would call
 17 for the disclosure of attorney/client privilege, I
 18 would instruct you not to answer.
 19 Q Without divulging any communication that
 20 your attorney may have given to you about your status
 21 as a target of a criminal investigation, is it your
 22 understanding that you are a target of a criminal
 23 investigation?
 24 A Same answer.
 25 Q Are you in fear of criminal prosecution?

13 (Pages 46 to 49)

| | |
|---|---|
| <p>1 A Same answer.</p> <p>2 MR. SPADA: And objection to the extent</p> <p>3 it would call for the disclosure of attorney/client</p> <p>4 privilege.</p> <p>5 Q Are there any documents that are in the</p> <p>6 possession of the United States Attorney's office or</p> <p>7 the SIPC Trustee that you believe will assist you to</p> <p>8 answer the questions that I'm asking of you without</p> <p>9 invocation of the Fifth Amendment privilege?</p> <p>10 MR. SPADA: I'm going to object to the</p> <p>11 question.</p> <p>12 As we've clearly stated before the</p> <p>13 Magistrate and today, it's our position we are</p> <p>14 entitled to the BLMIS documents before the witness</p> <p>15 has to respond to whether documents would -- whether</p> <p>16 he would testify about such matters.</p> <p>17 MR. RICCIO: So am I correct in</p> <p>18 understanding that that's the basis for the</p> <p>19 invocation of the Fifth Amendment?</p> <p>20 MR. SPADA: Among other things, yes.</p> <p>21 MR. RICCIO: What are the other things?</p> <p>22 MR. SPADA: Can I have the question read</p> <p>23 back?</p> <p>24 (Question read back.)</p> <p>25 A Same answer.</p> | <p>50</p> <p>1 Q Did you go to college?</p> <p>2 A Same answer.</p> <p>3 Q Did you go to law school?</p> <p>4 A Same answer.</p> <p>5 Q Did you ever go to school?</p> <p>6 A Same answer.</p> <p>7 Q Did you ever have a job in your life?</p> <p>8 A Same answer.</p> <p>9 Q When you were a teenager, did you have a</p> <p>10 job as a lifeguard?</p> <p>11 A Same answer.</p> <p>12 Q Did your brother have a job as a</p> <p>13 lifeguard?</p> <p>14 A Same answer.</p> <p>15 Q When was the last time you talked to</p> <p>16 Bernard Madoff?</p> <p>17 A Same answer.</p> <p>18 Q Did you ever talk to him in your entire</p> <p>19 life?</p> <p>20 A Same answer.</p> <p>21 Q Do you need documents to assist you to</p> <p>22 decide whether or not you can answer the question as</p> <p>23 to whether you ever spoke to your brother in your</p> <p>24 entire life?</p> <p>25 MR. SPADA: Objection. You can respond.</p> |
| <p>51</p> <p>1 Q Have you had any conversations with</p> <p>2 anyone from the SEC regarding this case?</p> <p>3 A Same answer.</p> <p>4 Q Is your son-in-law an employee of the</p> <p>5 SEC?</p> <p>6 A Same answer.</p> <p>7 Q Is your son-in-law a former employee of</p> <p>8 the SEC?</p> <p>9 A Same answer.</p> <p>10 Q Have you had any conversations with the</p> <p>11 SIPC Trustee regarding the subject matter of this</p> <p>12 action?</p> <p>13 A Same answer.</p> <p>14 Q Now, Mr. Madoff, I'm going to ask you</p> <p>15 about your personal background.</p> <p>16 First, how old are you?</p> <p>17 MR. SPADA: Asked and answered.</p> <p>18 You can respond.</p> <p>19 A Same answer.</p> <p>20 Q Where did you go to high school?</p> <p>21 A Same answer.</p> <p>22 Q Did you go to high school?</p> <p>23 A Same answer.</p> <p>24 Q Did you go to grammar school?</p> <p>25 A Same answer.</p> | <p>53</p> <p>1 A Same answer.</p> <p>2 Q Is it fair to say that any questions I</p> <p>3 ask about any past employment will result in an</p> <p>4 invocation of your Fifth Amendment privilege?</p> <p>5 A Same answer, yes.</p> <p>6 Q Mr. Madoff, I have a series of questions</p> <p>7 for you regarding your involvement with various</p> <p>8 industry groups such as the NASD, the NASDAQ, the</p> <p>9 FINRA, the Securities Traders Association of New</p> <p>10 York, the Depository Trust & Clearing Corp., the</p> <p>11 Securities Industry Financial Markets Association,</p> <p>12 and am I correct that if I ask you any questions</p> <p>13 about any of those groups that you will invoke your</p> <p>14 Fifth Amendment privilege with respect to each and</p> <p>15 every such question?</p> <p>16 A Yes.</p> <p>17 Q Why?</p> <p>18 MR. SPADA: Objection, calls for legal</p> <p>19 advice and I instruct the witness not to answer.</p> <p>20 Q Do you remember -- is there something</p> <p>21 wrong with your memory?</p> <p>22 MR. SPADA: Objection.</p> <p>23 Q Do you recall -- I'll strike the</p> <p>24 question.</p> <p>25 Do you recall at the outset of this</p> |

14 (Pages 50 to 53)

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1 deposition I asked you if you had a mental or health
2 problem that prevented you from giving testimony
3 today, and I think you said "No"?
4 MR. SPADA: He responded to that.
5 Q You responded to that.
6 So what I'm asking you is: With respect
7 to the organizations such as NASDAQ, N-A-S-D-A-Q, is
8 there anything wrong with your memory for you to
9 determine whether or not you ever held a position
10 with that group?
11 MR. SPADA: I'm going to object to that
12 question. He's been advised not to answer. He's
13 accepting that advice.
14 It's not appropriate to ask him other
15 than what you've asked him up front about his memory.
16 MR. RICCIO: Well, is it a direction not
17 to answer or an invocation of the Fifth?
18 MR. SPADA: Well, he's already answered
19 it, is there anything wrong with his memory today
20 that can keep him from testifying.
21 MR. RICCIO: So the answer is --
22 MR. SPADA: The answer is there's
23 nothing wrong with his memory. He responded.
24
25

55

1 BY MR. RICCIO:
2 Q So you don't have a memory lapse with
3 respect to your involvement with NASDAQ, do you?
4 MR. SPADA: Objection to form.
5 A Same answer.
6 Q And am I correct that no -- strike that.
7 Am I correct that you do not need
8 documents to refresh your recollection as to whether
9 or not you were formally involved with NASDAQ?
10 MR. SPADA: Objection to form.
11 A Same answer.
12 Q Am I correct that you don't need
13 documents to refresh your recollection as to whether
14 or not you have previously given depositions?
15 MR. SPADA: Objection to form.
16 A Same answer.
17 Q Am I correct that you do not need
18 documents to refresh your recollection as to whether
19 or not you ever testified in another court
20 proceeding?
21 MR. SPADA: Objection to form.
22 A Same answer.
23 Q Am I correct that you do not need
24 documents to refresh your recollection as to whether
25 or not you -- as to what you did to prepare for this

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1 deposition?
2 MR. SPADA: Objection to form, and it's
3 an inappropriate question and calls for legal advice.
4 A Same answer.
5 Q Am I correct that you do not need
6 documents to refresh your recollection as to whether
7 or not you were ever a party in a prior litigation?
8 A Same answer.
9 Q Am I correct that you do not need
10 documents to refresh your recollection as to whether
11 or not you had conversations with the following
12 persons or entities: The United States Attorney's
13 office, the SEC, or the SIPC Trustee?
14 MR. SPADA: Objection to form.
15 A Same answer.
16 Q Am I correct that you do not need
17 documents to refresh your recollection as to whether
18 you ever went to school in your entire life?
19 MR. SPADA: Objection to form.
20 A Same answer.
21 Q Am I correct that you do not need
22 documents to refresh your recollection as to whether
23 or not you ever had a job in your entire life?
24 MR. SPADA: Objection to form.
25 A Same answer.

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1 Q Do you hold any professional licenses?
2 A Same answer.
3 Q Am I correct that you will invoke the
4 Fifth Amendment with respect to any questions I might
5 have regarding professional licenses you may hold,
6 such as a license as an attorney, a Series 1 License,
7 a Series 7 License, or a Series 55 License or other
8 professional licenses?
9 MR. SPADA: Objection to form.
10 A Same answer.
11 Q Have you authored any publications?
12 A Same answer.
13 Q Do you need documents to refresh your
14 recollection as to whether or not you authored
15 anything?
16 MR. SPADA: Objection to form.
17 A Same answer.
18 Q Have you ever written anything in your
19 entire life?
20 MR. SPADA: Objection to form.
21 A Same answer.
22 Q Have you ever given a lecture in your
23 life?
24 A Same answer.
25 MR. SPADA: Objection to form.

15 (Pages 54 to 57)

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1 Q Have you ever gotten an award in your
2 life?

3 MR. SPADA: Objection to form.

4 A Same answer.

5 Q Have you ever received an honor?

6 MR. SPADA: Objection to form.

7 A Same answer.

8 Q Have you ever served as a member of any
9 board of directors?

10 MR. SPADA: Objection to form.

11 A Same answer.

12 Q Now, according to your Answer, you
13 worked at BMIS for about 40 years, is that correct?

14 A Same answer.

15 Q So would it be fair to say that having
16 worked at a place for about 40 years, that you would
17 have an understanding of the basic structure of the
18 enterprise at which you were working?

19 MR. SPADA: Objection to form.

20 A Same answer.

21 Q And is BMIS an LLC?

22 MR. SPADA: Objection to form.

23 A Same answer.

24 Q Who owns BMIS?

25 A Same answer.

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1 Q Are you a remember of BMIS?

2 MR. SPADA: Objection to form.

3 A Same answer.

4 Q Is BMIS an LLC?

5 A Same answer.

6 Q Your Answer says that BMIS had offices
7 on the 17-19 floors of a building located at
8 885 Third Avenue in New York City, is that correct?

9 A Same answer.

10 Q Is it correct that that's what your
11 Answer says? Look at paragraph 7.

12 A Which document are you talking about?

13 Q This will be P-2.

14 (Witness reviewing exhibit.)

15 MR. SPADA: Which paragraph?

16 MR. RICCIO: The seventh.

17 MR. SPADA: You're asking him -- what's
18 the question?

19 MR. RICCIO: Can we have it back?

20 (Record read.)

21 A Same answer.

22 (Court reporter clarification.)

23 MR. SPADA: Anywhere on the record where
24 you've heard "BLMIS," "BMIS" or "Madoff Securities",
25 I think both parties understand refers to Bernard L.

60

1 Madoff Securities.

2 MR. RICCIO: Bernard L. Madoff
3 Investment Securities.

4 MR. SPADA: Investment Securities,
5 right.

6 MR. RICCIO: We're using the terms
7 interchangeably.

8 BY MR. RICCIO:

9 Q So am I correct that if I were to ask
10 you questions about the structure of BLMIS, and by
11 "structure" I mean the form of the entity, the owners
12 of the entity, the various functions of the entity,
13 the employees of the entity, the business of the
14 entity, that you would invoke the Fifth Amendment
15 with respect to all of those areas?

16 MR. SPADA: Objection to form. You can
17 respond.

18 A Same answer.

19 Q "Same answer" meaning you will invoke
20 the Fifth Amendment as to all of those areas,
21 correct?

22 A Yes.

23 Q There was a Mr. DePascale who worked at
24 BLMIS. Do you recognize that name?

25

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1 A Same answer.

2 Q Have you ever seen that person in your
3 life?

4 A Same answer.

5 Q Did you ever speak to him?

6 A Same answer.

7 Q Do you know where he is now?

8 A Same answer.

9 Q Where is your brother now?

10 A Same answer.

11 MR. SPADA: I'll note for the record
12 that's a matter of public record where Bernard L.
13 Madoff is.

14 MR. RICCIO: That's why I raise it
15 because how can he invoke the Fifth Amendment with
16 respect to something that's a matter of public
17 record?

18 MR. SPADA: It's matter of public
19 record. If the witness is invoking his rights,
20 that's his right to do so.

21 And to sit here and get into an
22 argument, then you're going to argue whether he
23 waived his rights or not.

24 MR. RICCIO: No, I don't want to get
25 into an argument, but the Fifth Amendment, like all

16 (Pages 58 to 61)

1 constitutional rights, is not absolute, is not
2 absolute.
3 And there's no such thing as a blanket
4 invocation of the Fifth Amendment, which is what
5 we're experiencing here today.
6 It's inappropriate.
7 MR. SPADA: He's responding to each of
8 your questions.
9 And if you're saying things wouldn't be
10 a waiver then, you know, you can tell me which
11 questions you want to ask and agree it wouldn't be a
12 waiver of his rights, and then he can make his
13 decision.
14 Q Well, it's not waiving your right if you
15 tell me whether or not you know Mr. DePascale.
16 MR. SPADA: I'm going to object and
17 instruct the witness not to answer.
18 You know, you're trying to trick the
19 witness with a question like that.
20 MR. RICCIO: Charlie, you know what, I'm
21 not trying to trick the witness.
22 I'm trying to take a deposition that the
23 Court has allowed us to take.
24 The questions I'm asking are not
25 mystifying. They're very open questions. I'm

1 honestly asking them in good faith. This is not an
2 effort to trick the witness.
3 What the consequences are, the
4 consequences are.
5 MR. SPADA: That's correct.
6 MR. RICCIO: He will determine what
7 those consequences are, not me.
8 Can we take a five-minute break?
9 MR. SPADA: Sure.
10 (Recess.)
11 (Documents Re: Lautenberg Family
12 Foundation/Joshua Lautenberg are received and marked
13 as Plaintiffs' Exhibit 5 for Identification.)
14
15 BY MR. RICCIO:
16 Q Mr. Madoff, take a look at Plaintiffs'
17 Exhibit P-5 which are --
18 A I don't have it yet.
19 Q I'm going to show it to you.
20 -- which are documents related to the
21 Lautenberg Family Foundation and Joshua Lautenberg.
22 Would you take a look at those, please?
23 MR. SPADA: For the record, this is
24 Plaintiffs' Exhibit 5.
25 (Witness reviewing exhibit.)

1 Q Have you looked at the documents?
2 A Yes.
3 Q Do you recognize those documents as
4 being documents prepared by BLMIS?
5 A Same answer.
6 Q Can we agree that your brother has
7 admitted that for a period of time of 20 years,
8 during the operation of a Ponzi scheme by BLMIS, that
9 no trades were done for any customer?
10 A Same answer.
11 Q Can we agree that during a period of
12 20 years that BLMIS operated a Ponzi scheme and you
13 were a senior managing director and chief of
14 compliance for that firm?
15 MR. SPADA: Objection to form.
16 You can respond.
17 A Same answer.
18 Q Do you deny that all of the statements
19 issued to the Plaintiffs by BLMIS were mailed to the
20 Plaintiffs in Cliffside Park, New Jersey?
21 A Same answer.
22 Q Do you deny that you went to the State
23 of New Jersey in your capacity as an employee of
24 BLMIS?
25 A Same answer.

1 Q Do you deny that BLMIS advertised in New
2 Jersey?
3 A Same answer.
4 Q Do you deny that BLMIS had regular and
5 continuous contacts with the State of New Jersey?
6 A Same answer.
7 MR. SPADA: I'm just going to note for
8 the record, going back to one of your earlier
9 questions about these being mailed, Plaintiffs'
10 Exhibit 5 being mailed to the Plaintiffs, two of the
11 pages, the last two pages of Plaintiffs' Exhibit 5,
12 indicate that they're being mailed to Frank R.
13 Lautenberg, who is not listed as a Plaintiff in the
14 case.
15 Q Is what your lawyer just said correct?
16 MR. SPADA: Is it correct that that is
17 what Plaintiffs' Exhibit 5 says?
18 MR. RICCIO: No. I'm asking the witness
19 whether he agrees with what you just said because
20 you're not the witness, he's the witness.
21 MR. SPADA: I'm just correcting what was
22 a mischaracterization on the record about who it says
23 it was mailed to.
24 MR. RICCIO: Well, he can correct that.
25 MR. SPADA: You're asking is that what

17 (Pages 62 to 65)

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| <p>1 this document says?</p> <p>2 MR. RICCIO: I'm asking the witness a</p> <p>3 question.</p> <p>4 With all due respect, I'm not asking you</p> <p>5 to give the answer. I'm asking the witness to give</p> <p>6 the answer.</p> <p>7 MR. SPADA: And your question is what?</p> <p>8 MR. RICCIO: Can you read it back?</p> <p>9 (The following question is read back:</p> <p>10 "Do you deny that all of the statements</p> <p>11 issued to the Plaintiffs by BLMIS were</p> <p>12 mailed to the Plaintiffs in Cliffside</p> <p>13 Park, New Jersey?)"</p> <p>14 MR. SPADA: Objection, you can respond.</p> <p>15 A Same answer.</p> <p>16 Q Do you deny that BLMIS had a significant</p> <p>17 number of investors who were domiciled in New Jersey?</p> <p>18 A Same answer.</p> <p>19 Q Do you deny that BLMIS had a significant</p> <p>20 business interest in New Jersey?</p> <p>21 A Same answer.</p> <p>22 Q Do you deny that BLMIS submitted false</p> <p>23 and fraudulent records to investors of BLMIS</p> <p>24 domiciled in New Jersey?</p> <p>25 A Same answer.</p> | <p>66</p> <p>1 Q If I ask you any questions about the</p> <p>2 activities on the 17th floor of BLMIS, am I correct</p> <p>3 that you will invoke your Fifth Amendment privilege?</p> <p>4 A Yes.</p> <p>5 Q Did you ever visit, at any time in your</p> <p>6 entire life, the 17th floor of the office building</p> <p>7 occupied by BLMIS during the course of your</p> <p>8 employment there?</p> <p>9 A Same answer.</p> <p>10 Q Was BLMIS registered as an investment</p> <p>11 advisor?</p> <p>12 A Same answer.</p> <p>13 MR. RICCIO: Can I see the Complaint,</p> <p>14 please? I guess it's P-1.</p> <p>15 (Handing.)</p> <p>16 Q Take a look at Exhibit A to P-1.</p> <p>17 Would you do that, please?</p> <p>18 (Witness reviewing exhibit.)</p> <p>19 Q What is that document?</p> <p>20 A Same answer.</p> <p>21 Q Did you prepare Exhibit A to P-1?</p> <p>22 A Same answer.</p> <p>23 Q Does Exhibit A to P-1 contain any</p> <p>24 statements by you?</p> <p>25 A Same answer.</p> |
| <p>67</p> <p>1 MR. SPADA: Can we go off the record a</p> <p>2 second?</p> <p>3 MR. RICCIO: Yes.</p> <p>4 (Discussion off the record.)</p> <p>5 MR. RICCIO: By stipulation, we're going</p> <p>6 to redact from Exhibit P-5 confidential information</p> <p>7 such as the taxpayer identification number that's</p> <p>8 listed on these statements.</p> <p>9 MR. SPADA: I would propose, I guess,</p> <p>10 rather than redact it, that, you know, it's</p> <p>11 anticipated we'll get a Confidentiality Order and</p> <p>12 that we request that that get confidential treatment.</p> <p>13 We can agree, as is stipulated, after</p> <p>14 the deposition for treatment of that material.</p> <p>15 MR. RICCIO: Well, we're still working</p> <p>16 on a Confidentiality Order, but for the purposes of</p> <p>17 today, P-5 is considered to be a confidential</p> <p>18 document at least as it relates to the taxpayer</p> <p>19 identification number.</p> <p>20 BY MR. RICCIO:</p> <p>21 Q Am I correct that the investment</p> <p>22 advisory arm of BLMIS was located on the 17th floor</p> <p>23 of the firm's offices?</p> <p>24 A Same answer.</p> <p>25</p> | <p>69</p> <p>1 Q Did you intend Exhibit A to P-1 to be a</p> <p>2 promotional piece utilized by BLMIS?</p> <p>3 MR. SPADA: Objection to form.</p> <p>4 A Same answer.</p> <p>5 Q Did you intend Exhibit A to P-1 to be a</p> <p>6 materially false and misleading statement to be</p> <p>7 relied upon by Plaintiffs?</p> <p>8 MR. SPADA: Objection to form.</p> <p>9 A Same answer.</p> <p>10 Q Did you intend for Exhibit A to P-1 to</p> <p>11 contain material omissions of fact for the purpose of</p> <p>12 deceiving Plaintiffs to invest in BLMIS?</p> <p>13 MR. SPADA: Objection to form.</p> <p>14 A Same answer.</p> <p>15 Q Take a look at Exhibit B to P-1.</p> <p>16 (Witness reviewing exhibit.)</p> <p>17 Q Have you ever seen that document before?</p> <p>18 A Same answer.</p> <p>19 MR. RICCIO: For the record, Exhibit B</p> <p>20 is a copy of the Complaint filed against Bernard</p> <p>21 Madoff on December 11, 2008.</p> <p>22 Q Take a look at P-2, which is the Answer</p> <p>23 to the Complaint, your Answer to this Complaint,</p> <p>24 specifically paragraph 26.</p> <p>25 Do you have that, paragraph 26?</p> |

18 (Pages 66 to 69)

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| <p>1 (Witness reviewing exhibit.)</p> <p>2 Q Okay. Do you have that paragraph in</p> <p>3 front of you?</p> <p>4 A Yes.</p> <p>5 Q And I'm going to read a portion of that</p> <p>6 paragraph.</p> <p>7 "On or about December 9, 2008, Bernard</p> <p>8 L. Madoff informed Defendant that there had been</p> <p>9 requests from clients for redemptions, and that</p> <p>10 Bernard L. Madoff was unable to meet those</p> <p>11 obligations."</p> <p>12 Is that a correct statement of what your</p> <p>13 brother said to you on or about December 9, 2008?</p> <p>14 A Same answer.</p> <p>15 Q Did you talk to your brother on</p> <p>16 December 9, 2008 about redemptions?</p> <p>17 A Same answer.</p> <p>18 Q Am I correct that you were not surprised</p> <p>19 when your brother confessed to operating a Ponzi</p> <p>20 scheme?</p> <p>21 A Same answer.</p> <p>22 Q And am I correct that the reason you</p> <p>23 were not surprised that your brother confessed to</p> <p>24 operating a Ponzi scheme is because you knew all</p> <p>25 about it?</p> | <p>70</p> <p>1 A Same answer.</p> <p>2 Q Am I correct that you were, in fact, a</p> <p>3 control person of BLMIS?</p> <p>4 A Same answer.</p> <p>5 Q Am I correct that this document lists</p> <p>6 you as a director of trading/chief compliance</p> <p>7 officer?</p> <p>8 A Same answer.</p> <p>9 Q And am I correct that that is an</p> <p>10 accurate description of your job at BLMIS from June</p> <p>11 of 1969 through December of 2008?</p> <p>12 A Same answer.</p> <p>13 Q And am I correct that you do not deny --</p> <p>14 strike that.</p> <p>15 Who was the accountant for BLMIS?</p> <p>16 A Same answer.</p> <p>17 Q Did you ever hear of a person by the</p> <p>18 name of David Freighling, F-r-e-i-g-h-l-i-n-g?</p> <p>19 A Same answer.</p> <p>20 Q Am I correct that you knew that David</p> <p>21 Freighling was the accountant for BLMIS?</p> <p>22 A Same answer.</p> <p>23 Q Am I correct that Mr. Freighling has</p> <p>24 pleaded guilty to perpetrating a fraud?</p> <p>25 A Same answer.</p> |
| <p>71</p> <p>1 A Same answer.</p> <p>2 Q Take a look at Exhibit C to P-1 which,</p> <p>3 for the record, is a Form ADV.</p> <p>4 (Witness reviewing exhibit.)</p> <p>5 Q Have you had a chance to go through the</p> <p>6 document?</p> <p>7 A Yes.</p> <p>8 Q Have you ever seen the document before?</p> <p>9 A Same answer.</p> <p>10 Q Am I correct that you prepared the</p> <p>11 document?</p> <p>12 A Same answer.</p> <p>13 MR. SPADA: And just for clarification,</p> <p>14 by "same answer" he's invoking his rights under the</p> <p>15 Fifth Amendment on the advice of counsel.</p> <p>16 MR. RICCIO: He doesn't mean "Yes"?</p> <p>17 MR. SPADA: Correct.</p> <p>18 Q Am I correct that you prepared this</p> <p>19 document?</p> <p>20 A Same answer.</p> <p>21 Q Am I correct that you do not deny that</p> <p>22 you prepared this document?</p> <p>23 A Same answer.</p> <p>24 Q Am I correct that this document lists</p> <p>25 you as a control person of BLMIS?</p> | <p>73</p> <p>1 Q Am I correct that Mr. Freighling had his</p> <p>2 offices in a strip mall?</p> <p>3 A Same answer.</p> <p>4 Q Am I correct that for the period of time</p> <p>5 that Mr. Freighling was the accountant for BLMIS,</p> <p>6 that you worked with him in providing him with</p> <p>7 financial information about BLMIS?</p> <p>8 A Same answer.</p> <p>9 Q Am I correct that the audits performed</p> <p>10 by David Freighling were fraudulent?</p> <p>11 A Same answer.</p> <p>12 Q Am I correct that when Mr. Freighling</p> <p>13 prepared fraudulent audits, you knew those audits</p> <p>14 were fraudulent?</p> <p>15 A Same answer.</p> <p>16 Q And is it fair to say that if I ask you</p> <p>17 any further questions about Mr. Freighling or the</p> <p>18 accounting functions performed by him, you will</p> <p>19 invoke your Fifth Amendment privilege?</p> <p>20 A Yes.</p> <p>21 Q Do you understand that every time you</p> <p>22 invoke your Fifth Amendment privilege here today that</p> <p>23 it allows for the Court to make an adverse inference</p> <p>24 against your interest in this litigation?</p> <p>25 MR. SPADA: I'm going to object to the</p> |

19 (Pages 70 to 73)

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| <p>74</p> <p>1 form of the question to the extent it calls for legal 2 advice or legal discussions between witness and 3 counsel and is not an appropriate question. 4 I direct you not to answer. 5 Q Mr. Madoff, you do not deny -- strike 6 that. 7 Do you deny that you were solely 8 responsible for the management and policies of BLMIS 9 during the course of your employment there? 10 MR. SPADA: Objection to form. 11 A Same answer. 12 Q Am I correct that you do not deny that 13 you verified the financial condition of BLMIS on a 14 regular basis? 15 A Same answer. 16 Q Am I correct that BLMIS maintained two 17 sets of books? 18 MR. SPADA: Objection to form. 19 A Same answer. 20 Q Am I correct that you knew that BLMIS 21 maintained two sets of books? 22 MR. SPADA: Objection to form. 23 A Same answer. 24 Q Am I correct that the reason BLMIS 25 maintained two sets of books was to defraud the</p> | <p>76</p> <p>1 had established one? 2 MR. SPADA: Objection to form. 3 A Same answer. 4 Q Am I correct that you did absolutely 5 nothing to prevent -- strike that. 6 Am I correct that you did absolutely 7 nothing to detect any violations of the securities 8 laws at BLMIS during the course of your entire 9 employment at that firm? 10 MR. SPADA: Objection to form. 11 A Same answer. 12 Q Are you aware that the SEC promulgated a 13 report of an investigation into the failure of the 14 SEC to uncover the Ponzi scheme at BLMIS? 15 A Same answer. 16 MR. SPADA: Could we go off the record 17 one second? 18 MR. RICCIO: Yes. 19 (Discussion off the record.) 20 (Recess.) 21 22 BY MR. RICCIO: 23 Q Am I correct that in 1992, a complaint 24 was made regarding the business practices of BLMIS? 25 MR. SPADA: Objection to form.</p> |
| <p>75</p> <p>1 investors and the regulators? 2 MR. SPADA: Objection to form. 3 A Same answer. 4 Q Am I correct that in your employment at 5 BLMIS that you did not establish a compliance program 6 of internal controls? 7 MR. SPADA: Objection to form. 8 A Same answer. 9 Q Am I correct that the reason you did not 10 establish a compliance program of internal controls 11 was so that the Ponzi scheme would go undetected? 12 MR. SPADA: Objection to form. 13 A Same answer. 14 Q Am I correct that you did not implement, 15 even if you established a compliance program of 16 internal controls? 17 MR. SPADA: Objection to form. 18 A Same answer. 19 Q Am I correct that you did not monitor a 20 compliance program of internal controls even if you 21 had established one? 22 MR. SPADA: Objection to form. 23 A Same answer. 24 Q Am I correct that you did not enforce a 25 compliance program of internal controls even if you</p> | <p>77</p> <p>1 A Same answer. 2 Q Am I correct that the SEC suspected that 3 BLMIS, in 1992, was operating a Ponzi scheme? 4 MR. SPADA: Objection to form. 5 A Same answer. 6 Q Am I correct that you and your brother 7 intentionally concealed from the SEC information that 8 would allow them to have uncovered the Ponzi scheme 9 in 1992? 10 MR. SPADA: Objection to form. 11 A Same answer. 12 Q Am I correct that in May of 2000, in 13 March of 2001, and in October of 2005, that a person 14 named Harry Markopolos, M-a-r-k-o-p-o-l-o-s, 15 complained to the SEC that BLMIS was the world's 16 largest hedge fund -- strike that. 17 Strike the whole question. 18 Do you know a person named Harry 19 Markopolos? 20 A Same answer. 21 Q Am I correct that in May 2000, 22 March 2001, and October 2005, Mr. Markopolos made a 23 complaint -- made complaints to the SEC about the 24 lawfulness of the business operations of BLMIS? 25 A Same answer.</p> |

20 (Pages 74 to 77)

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1 Q Am I correct that in his complaints he
2 detailed approximately 30 red flags indicating that
3 BLMIS was operating a Ponzi scheme?
4 MR. SPADA: Objection to form.
5 A Same answer.
6 Q Am I correct that you were aware of
7 Mr. Markopolos' complaints?
8 A Same answer.
9 Q Am I correct that you, in conjunction
10 with your brother, intentionally hid from the SEC
11 evidence that would have uncovered the Ponzi scheme
12 at the time of Mr. Markopolos' complaints?
13 MR. SPADA: Objection to form.
14 A Same answer.
15 Q Am I correct that you were aware of the
16 30 red flags identified by Mr. Markopolos?
17 MR. SPADA: Objection to form.
18 A Same answer.
19 Q Am I correct that you consciously
20 avoided doing anything about those red flags?
21 MR. SPADA: Objection to form.
22 A Same answer.
23 Q Am I correct that in May of 2003, a
24 hedge fund manager complained to the SEC about the
25 business practices of BLMIS?

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1 MR. SPADA: Objection to form.
2 A Same answer.
3 Q Am I correct that you were aware of that
4 complaint?
5 A Same answer.
6 Q Am I correct that you intentionally hid
7 from the SEC evidence that would have caused the SEC,
8 in May of 2003, to uncover the BLMIS Ponzi scheme?
9 MR. SPADA: Objection to form.
10 A Same answer.
11 Q Am I correct that there were, according
12 to the SEC's investigation of itself, as many as six
13 separate complaints filed with the SEC about BLMIS
14 and its business practices?
15 MR. SPADA: Objection to form.
16 A Same answer.
17 Q Am I correct that had you not knowingly
18 cooperated with your brother in concealing the
19 information from the SEC, that as early as 1992 the
20 SEC would have discovered that BLMIS was a massive
21 Ponzi scheme?
22 MR. SPADA: Objection to form.
23 A Same answer.
24 Q Am I correct that you, by virtue of your
25 control of BLMIS, perpetuated the Ponzi scheme for at

80

1 least 20 years?
2 MR. SPADA: Objection to form.
3 A Same answer.
4 Q Am I correct that you perpetuated the
5 scheme knowingly, willfully, and wantonly?
6 MR. SPADA: Objection to form.
7 A Same answer.
8 Q Did you ever hear of a firm by the name
9 of Avellino, A-v-e-l-l-i-n-o, and Bienes,
10 B-i-e-n-e-s?
11 A Same answer.
12 Q Am I correct that BLMIS, through
13 yourself and your brother, used Avellino & Bienes to
14 defraud customers?
15 MR. SPADA: Objection to form.
16 A Same answer.
17 Q Mr. Madoff, take a look at Exhibit D to
18 the Complaint.
19 MR. SPADA: That's the document that's
20 entitled "The World's Largest Hedge Fund is a Fraud"
21 dated November 7, 2005?
22 MR. RICCIO: That's it.
23 (Witness reviewing exhibit.)
24 Q Am I correct, Mr. Madoff, that the
25 investors in BLMIS personally relied on you to

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1 operate BLMIS in an honest and ethical, law-abiding
2 manner?
3 MR. SPADA: Objection to form.
4 A Same answer.
5 Q And am I correct that you, in your
6 capacity as a control person of BLMIS, breached that
7 reliance on you by the investors because you did not
8 operate BLMIS in an honest, ethical, law-abiding
9 manner?
10 MR. SPADA: Objection to form.
11 A Same answer.
12 (Article by Michael Ocrant, May 2001, is
13 received and marked as Plaintiffs' Exhibit 6 for
14 Identification.)
15 (Article by Erin Arvedlund, 5/7/01,
16 is received and marked as Plaintiffs' Exhibit 7 for
17 Identification.)
18 Q Take a look at Exhibit D to the
19 Complaint.
20 That's a document that was filed with
21 the SEC by Mr. Markopolos, to my understanding.
22 MR. SPADA: I'll object to the
23 characterization. It is what it is.
24 MR. RICCIO: Can't we stipulate that
25 that's an accurate statement of what the document is?

21 (Pages 78 to 81)

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1 MR. SPADA: I don't know that he filed
2 it with the SEC.
3 MR. RICCIO: Sent it.
4 MR. SPADA: Submit, maybe.
5 MR. RICCIO: Sent to it to the SEC.
6 MR. SPADA: I mean, I don't know that to
7 be a fact, but you can...
8 Q Do you recognize the document,
9 Mr. Madoff?
10 A Same answer.
11 Q Am I correct that you were aware of
12 Mr. Markopolos' complaint to the SEC as reflected in
13 Exhibit D to the Complaint?
14 A Same answer.
15 Q Am I correct that you knowingly ignored
16 Mr. Markopolos' complaint?
17 A Same answer.
18 Q Am I correct that the reason you
19 knowingly ignored Mr. Markopolos' complaint is
20 because you knew that BLMIS was operating a Ponzi
21 scheme?
22 A Same answer.
23 Q And am I correct that you knew that
24 Mr. Markopolos was correct in the allegations he was
25 making to the SEC?

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1 MR. SPADA: Objection to form.
2 A Same answer.
3 Q Take a look at P-6 and P-7.
4 MR. SPADA: Has the court reporter
5 marked these?
6 MR. RICCIO: Yes, they've been marked.
7 (Witness reviewing exhibits.)
8 Q All right. You've taken a look at
9 Exhibits P-6 and P-7, correct?
10 A Yes.
11 Q And am I correct that P-6 is an article
12 written by Michael Ocrant, O-c-r-a-n-t?
13 MR. SPADA: Objection to form.
14 A Same answer.
15 Q And this was published in May of 2001?
16 MR. SPADA: Objection to form.
17 A Same answer.
18 Q And P-7 is an article written by Erin
19 Arvedlund, A-r-v-e-d-l-u-n-d?
20 MR. SPADA: Objection to form.
21 A Same answer.
22 Q And this was written, am I correct, on
23 May 7, 2001?
24 MR. SPADA: Objection to form.
25 A Same answer.

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1 Q You saw both P-6 and P-7 at or about the
2 time they appeared in public print, did you not?
3 A Same answer.
4 Q And am I correct that the suggestions
5 and observations contained in P-6 and P-7 about the
6 integrity and the honesty and the law -- strike
7 that -- about the integrity, honesty and law-abiding
8 nature of BLMIS were accurate?
9 MR. SPADA: Objection to form.
10 A Same answer.
11 Q And am I correct that you discussed both
12 of these articles with your brother Bernard?
13 MR. SPADA: Objection to form.
14 A Same answer.
15 Q And am I correct that the reason you
16 discussed them with your brother Bernard was because
17 it concerned you that the Ponzi scheme was going to
18 be detected?
19 MR. SPADA: Objection to form.
20 A Same answer.
21 Q And, in fact, both you and your brother
22 Bernard took steps to make sure that the information
23 contained in these articles, P-6 and P-7, did not
24 uncover the Ponzi scheme?
25 MR. SPADA: Objection to form.

85

1 A Same answer.
2 Q Mr. Madoff, do you deny that it was your
3 responsibility to file reports with the SEC regarding
4 the business practices of BLMIS?
5 A Same answer.
6 Q And am I correct that you knowingly and
7 intentionally filed false documents with the SEC
8 regarding BLMIS' business practices?
9 A Same answer.
10 Q And am I correct that you knowingly and
11 intentionally filed false documents with the SEC in
12 order to materially mislead the SEC and the public
13 regarding the financial condition and business
14 operations of BLMIS?
15 A Same answer.
16 Q Am I correct that you knowingly and
17 intentionally cooperated with David Freighling,
18 BLMIS' accountant, in submitting materially false and
19 misleading information to the SEC?
20 MR. SPADA: Objection to form.
21 A Same answer.
22 Q Based on your knowledge, training, and
23 experience, have you ever heard of the term "internal
24 controls"?
25 A Same answer.

22 (Pages 82 to 85)

1 Q Am I correct that while you were
2 employed by BLMIS in your capacity as head of
3 compliance and as a control person, that you never
4 established any internal controls or internal
5 compliance programs at BLMIS?
6 A Same answer.
7 Q Have you ever heard of the term
8 "internal risk management controls"?
9 A Same answer.
10 Q Am I correct that during the course of
11 your employment at BLMIS and in your capacity as head
12 of the compliance and as a control person, that you
13 never instituted any internal risk management
14 controls at BLMIS?
15 MR. SPADA: Objection to form.
16 A Same answer.
17 Q Am I correct that in your capacity as
18 head of compliance and as a control person of BLMIS,
19 that you did not communicate at any time with
20 department managers on a daily basis, on a monthly
21 basis, or on a yearly basis to ensure that proper
22 compliance procedures were being followed?
23 MR. SPADA: Objection to form.
24 A Same answer.
25 Q Am I correct that BLMIS never had an

1 audit committee?
2 MR. SPADA: Objection to form.
3 A Same answer.
4 Q Am I correct that the reason there was
5 no audit committee was to make sure that the Ponzi
6 scheme was not uncovered?
7 MR. SPADA: Objection to form.
8 A Same answer.
9 Q Am I correct that BLMIS never had an
10 investment advisory manual?
11 MR. SPADA: Objection to form.
12 A Same answer.
13 Q And am I correct that the reason BLMIS
14 never had an investment advisory manual was to
15 conceal the Ponzi scheme?
16 MR. SPADA: Objection to form.
17 A Same answer.
18 Q Am I correct that BLMIS was reviewed in
19 2007 pursuant to the Investment Advisory Act?
20 MR. SPADA: Objection to form.
21 A Same answer.
22 Q Am I correct that in connection with the
23 2007 annual review of BLMIS under the Investment
24 Advisory Act, that you provided materially false and
25 misleading statements to the reviewers?

1 MR. SPADA: Objection to form.
2 A Same answer.
3 Q Am I correct that BLMIS did not have an
4 anti-money laundering compliance program?
5 A Same answer.
6 Q Am I correct that the reason that BLMIS
7 did not have an anti-money laundering compliance
8 program was in order to conceal the Ponzi scheme?
9 MR. SPADA: Objection to form.
10 A Same answer.
11 Q Am I correct that BLMIS, with the
12 cooperation of yourself and your brother, engaged in
13 money laundering?
14 MR. SPADA: Objection to form.
15 A Same answer.
16 Q Am I correct that the money laundering
17 involved BLMIS affiliates in Europe?
18 MR. SPADA: Objection to form.
19 A Same answer.
20 Q Take a look at the Complaint again, P-1.
21 (Witness reviewing exhibit.)
22 Q Would you take a look at paragraph 32 --
23 well, strike that -- paragraphs 31 through and
24 including 35 -- through and including 34 of P-1?
25 (Witness reviewing exhibit.)

1 A Yes.
2 Q Am I correct that every allegation
3 contained in paragraphs 31 through and including 34
4 of the Complaint, P-1, is true and correct in every
5 respect?
6 A Same answer.
7 Q Am I correct that every allegation
8 contained in P-1, from the beginning of the Complaint
9 to the end of the Complaint, is true and correct in
10 every material respect?
11 MR. SPADA: Objection to form.
12 A Same answer.
13 Q Am I correct that you admit the
14 allegations contained in P-1?
15 MR. SPADA: Objection to form.
16 A Same answer.
17 Q Am I correct that the denials in your
18 Answer, which is P-2, are not true and correct?
19 MR. SPADA: Objection to form.
20 A Same answer.
21 Q Did you have an account at BLMIS in your
22 own name?
23 A Same answer.
24 Q Am I correct that during the period of
25 time that you had an account at BLMIS, that you

23 (Pages 86 to 89)

90

1 redeemed from your investment over \$16 million?

2 A Same answer.

3 Q Am I correct that in May of 2002 you

4 redeemed nearly \$6 million?

5 A Same answer.

6 Q Am I correct that you redeemed

7 approximately \$6.9 million between April 2003 and May

8 of 2005?

9 MR. SPADA: Objection to form.

10 A Same answer.

11 Q Am I correct that you redeemed over

12 \$3 million between September 2005 and April 2006?

13 MR. SPADA: Objection to form.

14 A Same answer.

15 Q Am I correct that the total amount of

16 your investments in these accounts, which produced

17 over \$16 million in returns, was \$32,000?

18 MR. SPADA: Objection to form.

19 A Same answer.

20 Q Do you consider an investment of \$32,000

21 which produces a \$16 million return a good

22 investment?

23 MR. SPADA: Objection to form.

24 A Same answer.

25 Q Did you know that the \$16 million that

91

1 you received from your investment at BLMIS came from

2 other BLMIS investors?

3 MR. SPADA: Objection to form.

4 A Same answer.

5 Q Did you know that some of the BLMIS

6 investors whose money you were taking as a redemption

7 were charities?

8 MR. SPADA: Objection to form.

9 A Same answer.

10 Q And hospitals?

11 MR. SPADA: Objection to form.

12 A Same answer.

13 Q And pensions?

14 MR. SPADA: Objection to form.

15 A Same answer.

16 Q Do you regret having taken that money?

17 MR. SPADA: Objection to form.

18 A Same answer.

19 Q Do you now know that the money that you

20 took was, in fact, money that belonged to charities,

21 pensions, hospitals, and the like?

22 MR. SPADA: Objection to form.

23 A Same answer.

24 Q Do you know that your brother admitted

25 that fact?

92

1 MR. SPADA: Objection.

2 A Same answer.

3 Q Have you offered to return any of that

4 money?

5 MR. SPADA: Objection to form.

6 A Same answer.

7 MR. RICCIO: Do you want to just give us

8 five minutes?

9 MR. SPADA: Sure.

10 (Recess.)

11 MR. RICCIO: Okay, just a few more

12 questions.

13

14 BY MR. RICCIO:

15 Q Mr. Madoff, do you admit that had you

16 not invoked your Fifth Amendment privilege today,

17 that you have sufficient personal knowledge to answer

18 all the questions that I've posed to you?

19 MR. SPADA: Objection to form.

20 A Same answer.

21 Q And the "same answer" is the Fifth

22 Amendment, correct, the "same answer" as what you

23 read earlier?

24 A Exactly, yes.

25 Q And do you admit that you had sufficient

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1 personal knowledge to answer all of the questions

2 I've posed to you today and did not need access to

3 any of the documents in the possession of the United

4 States Attorney's office, the SIPC Trustee, or any

5 other person?

6 MR. SPADA: Objection to form.

7 A Same answer.

8 MR. RICCIO: I have no further questions

9 at this time.

10 MR. SPADA: Thanks.

11 (Deposition concluded 1:40 p.m.)

12 (Exhibits retained by court reporter.)

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24 (Pages 90 to 93)

1 CERTIFICATE

2
3
4 I CERTIFY that the foregoing is a true and
5 accurate transcript of the testimony as taken by and
6 before me stenographically at the time and place
7 aforementioned.
8

9
10
11
12 I FURTHER CERTIFY that I am neither attorney
13 for nor counsel to any of the parties; parties of any
14 of the attorneys in this action; and that I am not
15 financially interested in the outcome of this case.
16

17
18 _____
19 SUSAN GIOFFRE, CCR
20 License No. XI001220
21 Notary Public of the State of New Jersey

22 My Commission Expires:
23 March 30, 2010
24
25

95

1
2
3 I have read the foregoing transcript
4 and certify that it is a true and accurate
5 transcript of my testimony in the above-captioned
6 matter.
7
8

9
10 _____
11 PETER MADOFF
12
13
14
15
16

17 Subscribed and sworn to before me
18 this ____ day of ____, 2009
19
20
21

22 _____
23
24 A Notary Public
25

25 (Pages 94 to 95)

C E R T I F I C A T E

I CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken by and before me stenographically at the time and place aforementioned.

I FURTHER CERTIFY that I am neither attorney for nor counsel to any of the parties; parties of any of the attorneys in this action; and that I am not financially interested in the outcome of this case.


SUSAN GIOFFRE, CCR
License No.. XI001220

My Commission Expires:
March 30, 2010

1
2
3 I have read the foregoing transcript
4 and certify that it is a true and accurate
5 transcript of my testimony in the above-captioned
6 matter.
7
8
9

10
11 _____
12 PETER MADOFF
13
14
15
16

17 Subscribed and sworn to before me
18 this ____ day of ____, 2009
19
20
21
22

23 _____
24 A Notary Public
25

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